Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

PATRICIA K. LANGER and
HENRY J. LANGER,
Petitioners

vs.

UNITED STATES OF AMERICA,
Respondent

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Patricia K. Langer and
Henry J. Langer
7101 Antrim Court
Edina, MN 55439
(952) 941-6117

Question(s) Presented For Review

Henry J. Langer and Patricia K. Langer (taxpayers) appealed from the orders of the United States District Court for the District of Minnesota entered in favor of the United States. The United States filed separate suits seeking enforcement of IRS summonses issued to taxpayers as part of an examination of their joint federal income tax return for 2001.

1. Were the IRS summonses issued in bad faith?
2. Were the IRS summonses issued for an improper purpose?
3. Were the IRS summonses issued to harass the taxpayers, especially Patricia K. Langer?

List of Parties

Sara Ann Ketchum, Esquire
Tax Division
U.S. Department of Justice
Appellate Section
P. O. Box 502
Washington, D.C. 20044

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix M to the petition.

JURISDICTION

The date on which the United States Court of Appeals decided our case was December 29, 2005.

A timely petition for rehearing by the panel was denied by the United States Court of Appeals on the following date: March 20, 2006, and the order denying rehearing by the panel appears at Appendix N.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

MISC. NO. 04-30 (DWF/JSM)

Plaintiff,

v. ORDER

PATRICIA LANGER,

Defendant.

JANIE S. MAYERON, United States Magistrate Judge

The above matter came on for hearing before the undersigned upon plaintiff's Petition to Enforce Internal Revenue Service Summons [Docket No. 1] and defendant's Objection to Petition to Enforce Internal Revenue Service Summons and Motion to Quash Internal Revenue Service Summons [Docket No. 4]. Roylene Ann Champeaux, Esq. appeared on behalf of plaintiff. Defendant did not make an appearance. [1]

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[1] Patricia Langer's husband, Henry J. Langer appeared on her behalf during the hearing on this matter. Mr. Langer claimed that Internal Revenue Service Form 8821 gave him the authority to appear and represent Patricia Langer before the IRS. Henry Langer is named the appointee on Form 8821. Under Form 8821, the appointee is "authorized to inspect and/or receive confidential tax information in any officer of the IRS for the tax matters listed on this line." Form 8821 makes no mention of the appointee being able to appear or represent a spouse in court on tax related matters. Moreover, although an individual is entitled to represent himself, they are not entitled to act as an attorney for others in federal court, Ebersen, Inc., v. City council of Minneapolis, No. Civ. 03-6482RHK/AJB, 2004 WL 483165 at * 1 (D. Minn. March 11, 2004)

The Court, being duly advised in the premises, upon all of the files, records and proceedings herein, now makes and enters the following Order.

IT IS HEREBY ORDERED:

1. Plaintiff's Petition to Enforce Internal Revenue Service Summons [Docket No. 1] is **GRANTED**. Patricia K. Langer is ordered to comply with the March 29, 2004 Summons as to each and every requirement. Patricia K. Langer shall appear before IRS Agent Mary Jo Rasmussen or other proper officer or employee of the IRS at such time and place as may be fixed by IRS Agent Mary Jo Rasmussen or other proper officer or employee of the IRS and produce the information specified in the March 29, 2004 Summons. The Government's request for an award of costs in maintaining this action is **DENIED**.

2. Respondent's Objection to Petition to Enforce Internal Revenue Service Summons and Motion to Quash Internal Revenue Service Summons [Docket No. 4] is **DENIED**.

Dated: November 29, 2004

s/*Janie S. Mayeron*
JANIE S. MAYERON
United States Magistrate Judge

(citing 28 U.S.C. § 1654; Tsevegmid v. Ashcroft, 318 F.3d 1226, 1228 n. 3 (10th Cir. 2003); Lutz v. Lavelle, 809 F. Supp. 323, 325 (M.D. Pa. 1991)). Further, it should be noted that it is unlawful for Mr. Langer, as a non-attorney to represent his wife under Minnesota state law. Id. (citing Minn. Stat. § 481.02). As such, this Court will not consider the arguments put forth by Mr. [redacted]nger on behalf of his wife at the hearing on this matter. However, the Court will consider the written pleadings submitted by Patricia Langer.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Misc. No. 04-30 (DWF/JSM)

Petitioner,

v. **ORDER**

Patricia K. Langer,

Respondent.

This matter is before the Court upon the Respondent's Objections to Magistrate Judge Janie S. Mayeron's Order dated November 29, 2004, which the Court will deem to be a report and recommendation. Respondent, Patricia K. Langer, has filed objections to the Order of Magistrate Judge Janie S. Mayeron.

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of the respondent along with any submissions made by the respondent's husband, Henry J. Langer, pursuant to 28 U.S.C. 636(b)(1); Local Rule 72.1(c).

Based upon the *de novo* review of the record and all of the submissions and presentations of the parties, and the Court being otherwise duly advised on the premises, the Court hereby enters the following:

ORDER

1. Magistrate Judge Janie S. Mayeron's Order dated November 29, 2004 is **ADOPTED**.
2. Respondent Patricia K. Langer's objections are respectfully **OVERRULED**.

3. Petitioner's Petition to Enforce Internal Revenue Service Summons [Docket No. 1] is **GRANTED**. Patricia K. Langer is ordered to comply with the March 29, 2004 Summons as to each and every requirement. Patricia K. Langer shall appear before IRS Agent Mary Jo Rasmussen or other proper officer or employee of the IRS at such time and place as may be fixed by IRS Agent Mary Jo Rasmussen or other proper officer or employee of the IRS and produce the information specified in the March 29, 2004 Summons.
4. The Government's request for an award of costs in maintaining this action is **DENIED**.
5. Respondent's Objection to Petition to Enforce Internal Revenue Service Summons and Motion to Quash Internal Revenue Service Summons [Docket No. 4] is **DENIED**.

Dated: December 15, 2004

s/*Donovan W. Frank*
DONOVAN W. FRANK
Judge of United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Civil. No. 04-MC-33 (DSD/SRN)

Plaintiff,

v. **ORDER**

Henry J. Langer,

Defendant.

SUSAN RICHARD NELSON, United States Magistrate Judge

The above-entitled matter came before the undersigned United States Magistrate Judge on September 27, 2004 on Plaintiff's Petition to Enforce Internal Revenue Service Summons (Doc. No. 1), this Court's Order to Show Cause (Doc. No. 2), and Defendant's Motion to Quash (Doc. No. 4). The district court has jurisdiction to enforce internal revenue laws pursuant to 28 U.S.C. §§ 7402(b); 7604(a) and (b). The undersigned United States Magistrate Judge has jurisdiction over this matter pursuant to 28 U.S.C. § 636 and Local Rule 72.1(c) (15).

THEREFORE, IT IS HEREBY ORDERED that:

1. Plaintiff's Petition to Enforce Internal Revenue Service Summons (Doc. No. 1) is **GRANTED in part and DENIED in part.** Defendant is ordered to obey the March 29, 2004 summons in each and every requirement. Defendant shall appear before IRS Agent Mary Jo Rasmussen or other proper officer or employee of

the IRS at such time and place as may be fixed by IRS Agent Mary Jo Rasmussen or other proper officer or employee of the IRS and produce the information specified in the March 29, 2004 summons. Plaintiff's motion to recover its costs in maintaining this action is denied.

2. Defendant's Motion to Quash (Doc. No. 4) is **DENIED.**

Dated: November 8, 2004

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States Magistrate Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Civil. No. 04-MC-33 (DSD/SRN)

Petitioner,

v. **ORDER**

Henry J. Langer,

Respondent.

This matter is before the court upon respondent's objections to the report and recommendation[1] of United States Magistrate Judge Susan R. Nelson, dated November 8, 2004. In her report, the magistrate judge concluded that the petition to enforce summons should be granted in part and denied in part and that respondent's motion to quash should be denied.

The court reviews the reports and recommendations of the magistrate judge de novo. 28 U.S.C. § 636 (b) (1) (C). The magistrate judge correctly analyzed the law and properly determined that the summons should be enforced.

Therefore, following a de novo review of the file and record, the court adopts the report and recommendation of the magistrate judge in its entirety. Accordingly, **IT IS HEREBY ORDERED** that:

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[1] Although the magistrate judge characterized her ruling as an order, the court agrees with the United States that the ruling is appropriately construed as a report and recommendation. See United States v. First Nat'l Bank of Atlanta, 628 F. 2d 871, 873 (5th Cir. 1980) (following similar procedure).

1. Petitioner's petition to enforce Internal Revenue Service summons [Doc. No. 1] is granted in part and denied in part.
2. Respondent's motion to quash [Doc. No. 4] is denied.

Dated: November 24, 2004

s/*David S. Doty*
David S. Doty, Judge
United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Civil. No. 04-MC-33 (DSD/SRN)

Petitioner,

v. **ORDER**

Henry J. Langer,

Respondent.

This matter is before the court upon respondent's motion to stay the court's order of November 29, 2004, pending appeal. Based upon a review of the file, record and proceedings herein, the court denies the motion,

The court weighs four factors when considering a motion for stay pending appeal: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Hilton v. Braunskill, 481 U.S. 770, 776-77 (1987). Here, respondent has made no showing whatsoever. He has offered no guidance as to how the court should weigh the factors in this case.

Based upon an independent review of the file and record, the court concludes that respondent is not likely to succeed on the merits of an appeal, that he will not be irreparably injured if required to respond to the IRS summons, that a stay might injure the IRS in its enforcement efforts and that the public interest favors the enforcement of

the Internal Revenue Code. Weighing all the factors together, the court concludes that the stay should be denied.

Accordingly, **IT IS HEREBY ORDERED** that respondent's motion for a stay pending appeal [Doc. No. 11] is denied.

Dated: January 21, 2005

s/*David S. Doty*
David S. Doty, Judge
United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Civil. No. 04-MC-33 (DSD/SRN)

Petitioner,

v. ORDER TO SHOW CAUSE FOR CONTEMPT

Henry J. Langer,

Respondent.

Upon the Application of the petitioner United States of America and the Affidavit of Mary Rasmussen, revenue agent of the Internal Revenue Service.

IT IS ORDERED that respondent, Henry J. Langer, appear before the United States District Court for the District of Minnesota, in that branch thereof presided over by the Honorable David S. Doty, the undersigned, in Courtroom 14 West in the United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415, on February 25, 2005 at 10:45 a.m. to show cause why he should not be held in contempt for failing to comply with the Court's Order of November 29, 2004, in which respondent was compelled to testify and produce the records demanded in the Internal Revenue Service summons served upon Henry J. Langer.

Dated: January 21, 2005

s/*David S. Doty*
David S. Doty, Judge
United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Civil. No. 04-MC-33 (DSD/SRN)

Petitioner,

v. ORDER

Henry J. Langer,

Respondent.

This matter is before the court upon respondent's "motion for continuance for order to show cause." The motion is essentially a motion to reconsider the court's order of January 21, 2005, in which the court denied respondent's motion for stay pending appeal. "Motions to reconsider are prohibited except by express permission of the Court, which will be granted only upon a showing of compelling circumstances." D. Minn. L.R. 7.1 (g). Respondent did not seek the court's permission to file the instant motion. For that reason, **IT IS HEREBY ORDERED** that the motion [Doc. No. 18] is denied.

Dated: February 7, 2005

s/*David S. Doty*
David S. Doty, Judge
United States District Court

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 05-1409

United States of America,

Appellee,

v. Appeal from the United States District Court for the District of Minnesota

Henry J. Langer,

Appellant.

ORDER

Appellant's motion for stay pending appeal has been considered by the court and is denied.

February 24, 2005

Order Entered at the Direction of the Court:

Michael E. Gans

Clerk, U.S. Court of Appeals, Eight Circuit

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Misc. No. 04-30 (DWF/JSM)

Petitioner,

v. **ORDER TO SHOW CAUSE FOR CONTEMPT**

Patricia K. Langer,

Respondent.

Upon the Application of the Petitioner United States of America and the Affidavit of Mary Rasmussen, revenue agent of the Internal Revenue Service.

IT IS ORDERED that Respondent, Patricia K. Langer, appear before the United States District Court for the District of Minnesota, in that branch thereof presided over by the Honorable Donovan W. Frank, the undersigned, in Courtroom 2 in the United States Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101, on April 20, 2005 at 9:00 a.m. to show cause why she should not be held in contempt for failing to comply with the Court's Order of December 15, 2004, in which respondent was compelled to testify and produce the records demanded in the Internal Revenue Service summons served upon Patricia K. Langer.

Dated: March 14, 2005

s/*Donovan W. Frank*
DONOVAN W. FRANK
Judge of United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Civil. No. 04-MC-33 (DSD/SRN)

Petitioner,

v. ORDER

Henry J. Langer,

Respondent.

IT IS HEREBY ORDERED that Assistant Federal Public Defender Scott Tilsen is appointed to represent respondent Langer for the limited purpose of responding to the court's show-cause order of January 21, 2005.

Dated: March 22, 2005

s/*David S. Doty*
David S. Doty, Judge
United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Civil. No. 04-MC-33 (DSD/SRN)

Petitioner,

v. ORDER

Henry J. Langer,

Respondent.

This matter came on for hearing on March 18, 2005, upon the court's January 21, 2005, order that respondent show just cause why he should not be held in contempt for his failure to respond to the Internal Revenue Service summons upheld by the court in its order of November 24, 2004. Petitioner United States appeared through its counsel Assistant United States Attorney Roylene A. Champeaux. Assistant Federal Public Defender Scott Tilsen specially appeared on behalf of respondent Langer for the purpose of these contempt proceedings.

Based upon the agreement of the parties reflected upon the record of the proceedings, **IT IS HEREBY ORDERED** that:

1. Respondent Henry J. Langer is adjudged in contempt of the court's order of November 29, 2004, enforcing the Internal Revenue Service summons.
2. Respondent shall deposit with the court all books, papers, records, data, invoices, statements, documents and things responsive to the Internal Revenue Service

summons no later than 9:00 a.m., April 1, 2005. By compliance with this order, respondent Langer will purge himself of the instant contempt.

3. Should respondent fail to so purge himself of his contempt, the court will, after further hearing, fashion an appropriate sanction not limited to a fine or imprisonment, or both,

Dated: March 22, 2005

s/*David S. Doty*
David S. Doty, Judge
United States District Court

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 05-1408/ 1409

United States of America,

Appellee,

vs. Appeal from the United States District Court for the District of Minnesota

Patricia K. Langer, et al.,

Appellants

Appellee's motion to strike is hereby ordered taken with the case for consideration by the panel to which this case is submitted for disposition on the merits.

(5082-010199)

June 10, 2005

Order Entered Under Rule 27B(a):

Michael E. Gans

Clerk, U.S. Court of Appeals, Eight Circuit

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 05-1408

United States of America,

Appellee,

v.

Patricia K. Langer,

Appellant.

No. 05-1409

Appeal from the United States District Court for the District of Minnesota

United States of America,

[UNPUBLISHED]

Appellee,

v.

Henry J. Langer,

Appellant.

Submitted: December 7, 2005
Filed: December 29, 2005

Before MURPHY, COLLOTON, and BENTON, Circuit Judges

PER CURIAM.

In these consolidated appeals, Patricia K. Langer and Henry J. Langer appeal the district court's[1] orders enforcing Internal Revenue Service (IRS) summonses. Having carefully reviewed the record, we conclude that the district court did not clearly err in enforcing the summonses. See United States v. Powell, 379 U.S. 48, 57-58 (1964) (enforcement of IRS summons is appropriate where record establishes that (1) there is legitimate purpose for investigation, (2) inquiry might be relevant to purpose, (3) IRS does not already have information sought, and (4) requisite administrative steps have been followed); United States v. Norwood, 420 F.3d 888, 892 (8th Cir. 2005) (prima facie case for enforcement of summons may be established by minimal showing of good faith compliance with requirements for summons and can be demonstrated by IRS agent's affidavit); United States v. Kaiser, 397 F.3d 641, 643 (8th Cir. 2005) (reviewing for clear error enforcement of IRS summons). The various assertions the Langers raise on appeal provide no basis for reversal.

Accordingly, we affirm. See 8th Cir. 47B. We also grant appellee's motion to quash the new exhibits the Langers have submitted with their reply brief.

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[1] The Honorable Donovan W. Frank, United States District Judge for the District of Minnesota, adopting the report and recommendations of the Honorable Janie S. Mayeron, United States Magistrate Judge for the District of Minnesota (No. 05-1408); and the Honorable David S. Doty, United States District Judge for the District of Minnesota, adopting the report and recommendations of the Honorable Susan Richard Nelson, United States Magistrate Judge for the District of Minnesota (No. 05-1409).

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 05-1408/ 05-1409

United States of America,

Appellee,

v. Appeal from the United States District Court for the District of Minnesota

Patricia K. Langer, et al.,

Appellants.

The petition for rehearing by the panel filed by appellants is denied.
(5193-010199)

March 20, 2006

Order Entered at the Direction of the Court:

Michael E. Gans

Clerk, U.S. Court of Appeals, Eight Circuit

STATEMENT OF THE CASE

1. On March 29, 2004, Revenue Agent, Jeff Leif, **knowledgeable that a 2nd FOIA appeal had just been filed,** delivered a summons to petitioners at their residence. The issuance of the summons was in violation of IRM § 1203. IRM 13.1.5.

a. On 03/04/2004, I (petitioner: Henry J. Langer) returned a telephone call to the Revenue Agent. After informing the Revenue Agent that a 2nd FOIA request was being submitted [in concurrence with discussions with both the FOIA Appeals Officer and the Disclosure Officer], the Revenue Agent became extremely aggressive in demanding to schedule a meeting.

b. On 03/29/2004, I (petitioner: Henry J. Langer) initiated the 2nd FOIA appeal and the Revenue Agent delivered a summons to petitioner to appear on April 15, 2004 at 9:00 AM.

2. On April 22, 2004, Petitioner [Henry J. Langer] reported misconduct violations, in concurrence with the Taxpayer Bill of Rights II:

a. IRS policy, procedure and practice were violated.

i. The IRS had gathered information for the tax years, 1999, 2000 and 2001.

ii. On February 25, 2003, Minnesota Department of Revenue – Income Tax Division Supervisor [Tom Maier] approved an audit of petitioners' 1999 and 2000 tax returns to commence on June 12, 2003.

iii. On February 27, 2003, the IRS prepared a memo entitled: "Issues to consider per conversation w/ Mark Primoli"

iv. On September 10, 2003, I [petitioner: Henry J. Langer] faxed to the Minnesota

Revenue Tax Specialist the answers to 5 pages of questions.

v. On September 10, 2003, the IRS Revenue Agent received petitioners' 2001 federal income tax return during his corporate training.

vi. On September 12, 2003, petitioners received a letter from the IRS, dated September 11, 2003, stating that their federal income tax return for 2001 **had been selected at random for a compliance research examination.**

vii. On December 12, 2003, "a call was made to Linda V. NRP coordinator on the existence of the exclusion form. She personally called the national office director, Charles Bennett and said the case should be excluded prior to going to the field. The prior issues were outlined and the official said the case will not be excluded".

a. Two FOIA requests have failed to obtain any documentation identifying the "prior issues" that were purportedly outlined.

viii. On March 1, 2004, petitioners received a Memo dated February 5, 2004 that stated: "To the best of my recollection, this case was to be assigned to the field for participation in the NRP program. ... Based on the past history of this taxpayer's delaying tactics National Office was contacted to see if the case could be excluded from the program."

a. Two FOIA requests have failed to obtain any documentation in support of the memo.

ix. On March 29, 2004, the IRS issued a Summons to petitioners.

b. Revenue Agent, Jeff Leif, on more than one occasion, exhibited overzealousness, excessive aggressiveness and intimidation.

i. The Revenue Agent arbitrarily scheduled appointment dates and times.

ii. The Summons was premature because petitioner [Henry J. Langer] never stated that petitioner [Henry J. Langer] was refusing to provide records.

iii. On March 25, 2004, petitioners sent a letter to the Revenue Agent, dated March 25, 2004, stating:

a. It is evident from our Examination File that our return was not selected randomly or computer selected and personal input was relevant in the selection of our return.

b. Upon the resolution of our FOIA appeal, we will contact you to address this matter.

iv. On March 29, 2004, the Revenue Agent issued a Summons to petitioners.

3. Petitioners' federal income tax return for 2001 was ***selected at random for a compliance research examination*** not for the purpose of ascertaining the correctness of any return or to determine the correct federal income tax liability.

a. Petitioners have been the subjects of an IRS vendetta wherein the Revenue Agents arbitrarily and capriciously created "issues" that resulted in the incredible microscopic scrutiny of their returns for the years 1983 through 1994. The arbitrary and capricious adjustments directly related to "full time equivalent" productivity.

b. The incredible scrutiny of their returns for the years 1990, 1991, 1992, 1993 and 1994 resulted in a minimal deficiency in income tax. The issue that caused even the minimal liability no longer exists.

c. Petitioners regard this "compliance research examination" as a continuation of the vexatious and harassing examination activity which motivated earlier examinations.

4. The administrative summons issued on March 29, 2004, ***was not issued for the purpose of the statistical sampling; it was issued for the purpose of ascertaining the correctness of the tax return.***

a. **The Information Document Request (IDR),** included with the letter, dated September 11, 2003, stating that petitioners' federal income tax return for 2001 had been selected at random for a compliance research examination was **issued for the purpose of the statistical sample.**

b. The administrative summons was issued on March 29, 2004, in accordance with Section 7602 of Title 26, U.S.C. Section 7602 provides: "For the purpose of ascertaining the correctness of any return ... "

c. The Summons did not include the IDR as an attachment and the books, records, papers and other data relating to the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws did not mirror the IDR.

d. A summons cannot be issued for an improper or ulterior purpose. IRM 25.5.4.4.1. Such a summons will not meet the requirements of *United States v. Powell, 379 U.S. 48 (1964).*

5. The respondent has knowledge from past dealings that your petitioner [Patricia K. Langer] is not in possession and control of testimony and documents for the year ended December 31, 2001.

a. On January 24, 1997, a summons for the years 1992, 1993 and 1994 was delivered to me [petitioner: Henry J. Langer] at our residence. The Summons was issued to petitioner [Henry J. Langer] in the matter of Henry J. Langer and Patricia K. Langer.

b. A summons for the years 1992, 1993 and 1994 was not issued to petitioner [Patricia K. Langer] in the matter of Henry J. Langer and Patricia K. Langer.

c. On February 13, 1997, I [petitioner: Henry J. Langer] met briefly with the Revenue Agent and manager. I [petitioner: Henry J. Langer] presented my two page written response to the summons [I saw no reason to submit records for 1994, until 1992 and 1993 were resolved] and politely excused myself. The summons, delivered on January 24, 1997, was not enforced.

6. The respondent knows that your petitioner [Patricia K. Langer] suffers from panic attacks and upon information and belief, states that this summons is issued solely to harass your petitioner [Patricia K. Langer] and not for a proper purpose.

a. On June 24, 2002, petitioner cancelled petitioner's [Patricia K. Langer] deposition set for June 26, 2002, because petitioner had been receiving medical treatment for panic attacks for the past several years. *Case No. 01-1094 (JMR/FLN).*

7. "Included with the petitions were declarations of Agents Leif and Rasmussen, in which they stated that the investigation was being conducted for the purpose of determining taxpayers' correct federal income tax liability for 2001; ... ; and that all administrative steps required by the Internal Revenue Code had been taken." The **declarations** of Agents Leif and Rasmussen **are silent** regarding:

a. the compliance research examination,

b. petitioners never refused to provide records.

Reasons For Granting The Petition

The Information Document Request (IDR), included with the letter, dated September 11, 2003, **detailed the documents requested for the compliance research examination.**

The **administrative summons was issued** on March 29, 2004, in accordance with Section 7602 of Title 26, U.S.C., **for the purpose of ascertaining the correctness of the tax return.**

The **Summons** did not include the IDR as an attachment and the books, records, papers and other data relating to the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws **did not mirror the IDR.**

The use of the term **research** ["compliance **research** examination"] as opposed to **investigation** ["I am conducting an **investigation**"] underscores the difference between the language in sections 7601 and 7602, upon which the IRS relies. The statute authorizing the issuance of summonses in connection with internal revenue **investigations** does not empower the Internal Revenue Service to conscript citizens into its service to perform the function of accumulating data for its research projects. *26 U.S.C.A. (I.R.C. 1954) §§ 7601,7602.*

The March 29, 2004 summons was issued merely to expedite the research process. *United States v. Humble Oil & Refining Co., 488 F.2d 953 (5th Cir. 1974).*

It is the Court's process which is invoked to enforce the administrative summons and a Court may not permit its process to be abused. Such an abuse would take place if a Court order is sought to compel production where the summons had been issued for an improper purpose, such as to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the

good faith of the particular investigation. *United States v. Powell, 379 U.S. 48 (1964.*

Before a section 7602 summons may issue, the IRS must have traversed the data gathering stage and initiated an investigation. *United States v. Humble Oil & Refining Co., 488 F.2d 953 (5th Cir. 1974).*

An adjustment of tax liabilities may incidentally result from the project but the **primary purpose of the project was research.** We do not believe that the provisions of 26 U.S.C. §§ 7601 and 7602 authorize the IRS to force private citizens to do its research. *United States v. Humble Oil & Refining Co., 518 F.2d 747 (5th Cir. 1975).*

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Henry J. Langer

Patricia K. Langer

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